

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:09-CR-11-D

UNITED STATES OF AMERICA)
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)
v.) **ORDER**
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SHAWN ALEXANDER POWELL,)
)
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Defendant.)

On April 20, 2009, pursuant to a written plea agreement, Shawn Alexander Powell (“Powell”) pleaded guilty to conspiracy to possess with the intent to distribute more than five grams of cocaine base (crack). See [D.E. 21, 22]. On September 22, 2009, the court held Powell’s sentencing hearing. See [D.E. 33, 34, 35]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report (“PSR”) and ruled on Powell’s objections. See Fed. R. Crim. P. 32(i)(3)(A)-(B); Sentencing Tr. [D.E. 35] 4–57. The court calculated Powell’s total offense level to be 35, his criminal history category to be VI, and his advisory guideline range to be 292 to 365 months’ imprisonment. See Sentencing Tr. at 4–5. After thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Powell to 216 months’ imprisonment. See *id.* at 73–86. Powell did not appeal.

On November 21, 2015, Powell moved (pro se) for a sentence reduction. See [D.E. 52]. On November 25, 2015 (through counsel), Powell moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782. See [D.E. 54]. Powell’s new advisory guideline range is 188 to 235 months’ imprisonment, based on a total offense level of 31 and a criminal history category of VI. See Resentencing Report. Powell requests a 188-month sentence. See *id.*; [D.E. 54].

The court has discretion under Amendment 782 to reduce Powell's sentence. See, e.g., Chavez-Meza v. United States, No. 17-5639, 2018 WL 3013811, at *4–7 (U.S. June 18, 2018); Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Peters, 843 F.3d 572, 574 (4th Cir. 2016); United States v. Patterson, 671 F. App'x 105, 105–06 (4th Cir. 2016) (per curiam) (unpublished); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306–07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Powell's sentence, the court finds that Powell engaged in serious criminal behavior. See PSR ¶¶ 5–9; Sentencing Tr. at 4–57. Moreover, Powell is a recidivist and has convictions for larceny, breaking and entering a motor vehicle (two counts), elude arrest with motor vehicle with three aggravating factors, and possession of cocaine (two counts). See PSR ¶¶ 12–27. Powell also has performed poorly on supervision and has essentially no work history. See id. ¶¶ 12–15, 23–24, 43–45. Powell has taken some positive steps while incarcerated on his federal sentence, but he has been sanctioned for being in an unauthorized area on two occasions, being absent from assignment, and possessing gambling paraphernalia. See Resentencing Report; cf. Pepper v. United States, 562 U.S. 476, 491 (2011).

Having reviewed the entire record and all relevant policy statements, the court finds that Powell received the sentence that was “sufficient, but not greater than necessary” under 18 U.S.C. § 3553(a). Further reducing Powell's sentence would threaten public safety in light of his serious criminal conduct, serious criminal history, and misconduct while incarcerated. Cf. U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the court denies Powell's motion for reduction of sentence under

Amendment 782. See, e.g., Chavez-Meza, 2018 WL 3013811, at *4–7; Patterson, 671 F. App’x at 105–06; Cole, 618 F. App’x at 178–79; Thomas, 546 F. App’x at 225–26; Perez, 536 F. App’x at 321.

In sum, the court DENIES Powell’s motions for reduction of sentence [D.E. 52, 54].

SO ORDERED. This 10 day of June 2018.



JAMES C. DEVER III
Chief United States District Judge